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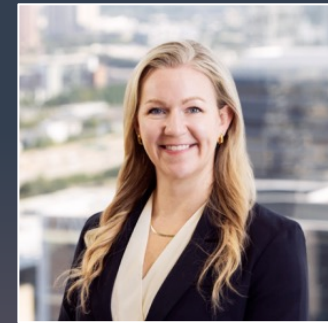
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**OCR's Recent
Title IX RAs**

**Disparate
Impact Rule
and Student
Discipline**

**OCR's Recent
Title VI RAs**

**Transgender
Students in
Athletics**

**Upcoming
Supreme
Court Case**

**OCR's Sexual
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Transgender Students in Athletics

SCOTUS Decision Fallout

Over the summer, the Supreme Court issued a decision upholding two state laws that limit participation on sex-separated sports teams based on sex assigned at birth.



Dropped Lawsuits



- ▶ Two transgender female New Hampshire students dropped their challenge to NH law limiting participation in girls' sports to biological females.
 - ▶ Lawyers initially said that planned to continue because the legal issues were different
 - ▶ Soon after, dismissed lawsuit, noting that one plaintiff had moved out of state, and the other was no longer seeking to participate in sports

Right to Restrooms based on Biological Sex?



- ▶ Illinois court dismissed parent's challenge against school district's policy allowing transgender females access to "female-only" spaces
- ▶ No equal protection violation because policy allows all individuals, regardless of their sex, to use the restroom aligned with their gender identity
- ▶ No Title IX violation because regulations allowing sex-separate living facilities, toilets, locker rooms, and shower facilities is permissive



Challenges to ED Enforcement

- ▶ The state of Minnesota sued to prevent ED and other federal agencies from enforcing their understanding of Title IX against state and local entities in Minnesota
- ▶ ED argued that Minnesota's case should be dismissed for largely procedural reasons
- ▶ The court agreed, noting that Minnesota has not plausibly alleged final action by ED or a specific prohibition within Title IX sufficient to support its claim that ED's enforcement actions were *ultra vires*
- ▶ Minnesota's claim that ED seeks to exceed its authority under a spending clause statute by imposing standards that are unclear, unrelated to Title IX's purpose, and induce recipients to "violate the constitutional rights of students by discriminating against transgender individuals" survive



Challenges to ED Enforcement

- ▶ Jefferson County Public Schools in Colorado is suing the Trump administration over its threat to remove more than \$50 million dollars in federal funds from the school district because it violated Title IX by allowing transgender females to use girls' bathrooms and locker rooms, share overnight accommodations with female students, and participate in girls' sports.
- ▶ The school district also seeks clarification on whether it should follow current Colorado state law or ED's interpretation of federal law, which are in conflict.



Challenges to DOJ Enforcement

- ▶ A district court dismissed a DOJ lawsuit against the California Department of Education and California Interscholastic Federation over rules that require schools to permit transgender girls to compete on teams and use athletic facilities consistent with their gender identity.
- ▶ The district court found that it “need not resolve” the question of whether Title IX requires schools to limit access to girls' teams and facilities based on sex assigned at birth.
 - ▶ Even if DOJ's interpretation is correct, California lacked clear notice of this requirement as a condition of federal funding.
- ▶ Title IX and its implementing regulations “do not clearly communicate Plaintiff's further condition that biological sex must control every eligibility and facilities decision regardless of gender identity.”



**Upcoming
SCOTUS
Title IX Case**

Crowther v. Board of Regents

- ▶ Thomas Crowther was an art professor at Augusta University.
- ▶ In spring 2020, multiple students accused Crowther of sexual harassment.
- ▶ Following the complaints:
 - ▶ His department chair gave him a negative teaching evaluation.
 - ▶ The University conducted an internal investigation.
 - ▶ The investigation concluded that Crowther had violated the University's sexual harassment policy.
 - ▶ Crowther was suspended as a result.
- ▶ He challenged the decision through the University's internal appeal process, but his appeal was unsuccessful.
- ▶ The University subsequently declined to renew his contract.
- ▶ Crowther then sued the Board of Regents and several University officials, asserting claims of **sex discrimination and retaliation under Title IX**.



Crowther v. Board of Regents

- ▶ MaChelle Joseph previously coached Georgia Tech's women's basketball team.
- ▶ Joseph raised concerns with the Athletics Coordinator that the women's basketball program received fewer resources than the men's program, including differences in:
 - ▶ Marketing support
 - ▶ Locker-room space
 - ▶ Athletic facilities
- ▶ At the same time, players, assistant coaches, and administrators raised concerns about Joseph's coaching style, including allegations of bullying and a hostile team environment.
- ▶ Georgia Tech conducted an internal investigation, which substantiated concerns about the team environment.
- ▶ Georgia Tech subsequently terminated Joseph's employment.
- ▶ Joseph filed suit against Georgia Tech, alleging, among other claims, **sex discrimination and retaliation under Title IX.**



Title IX vs. Title VII



- ▶ *Crowther v. Board of Regents* asks the question of whether employees can bring a Title IX lawsuit for employment discrimination based on sex.
- ▶ The 2nd, 3rd, 6th, 9th, and 10th say this is allowed, because Title IX covers all discrimination based on sex in an education program or activity receiving federal funds.
- ▶ The 5th, 7th, and 11th say it is not allowed, because it is pre-empted by Title VII's comprehensive statutory scheme and plaintiffs cannot use Title IX to bypass Title VII's administrative exhaustion requirements and limits on damages.

What Does Title IX Say?

- ▶ Title IX itself does not say anything about private lawsuits – its only enforcement mechanism is the withdrawal of federal funds
- ▶ The Supreme Court recognized an “implied” private right of action for *students* in *Cannon v. Univ. of Chicago*, 441 U.S. 677 (1979)
- ▶ 26 years later, SCOTUS recognized a private right of action for employees suing for retaliation for in *Jackson v. Birmingham Board of Education*, 544 U.S. 167 (2005).

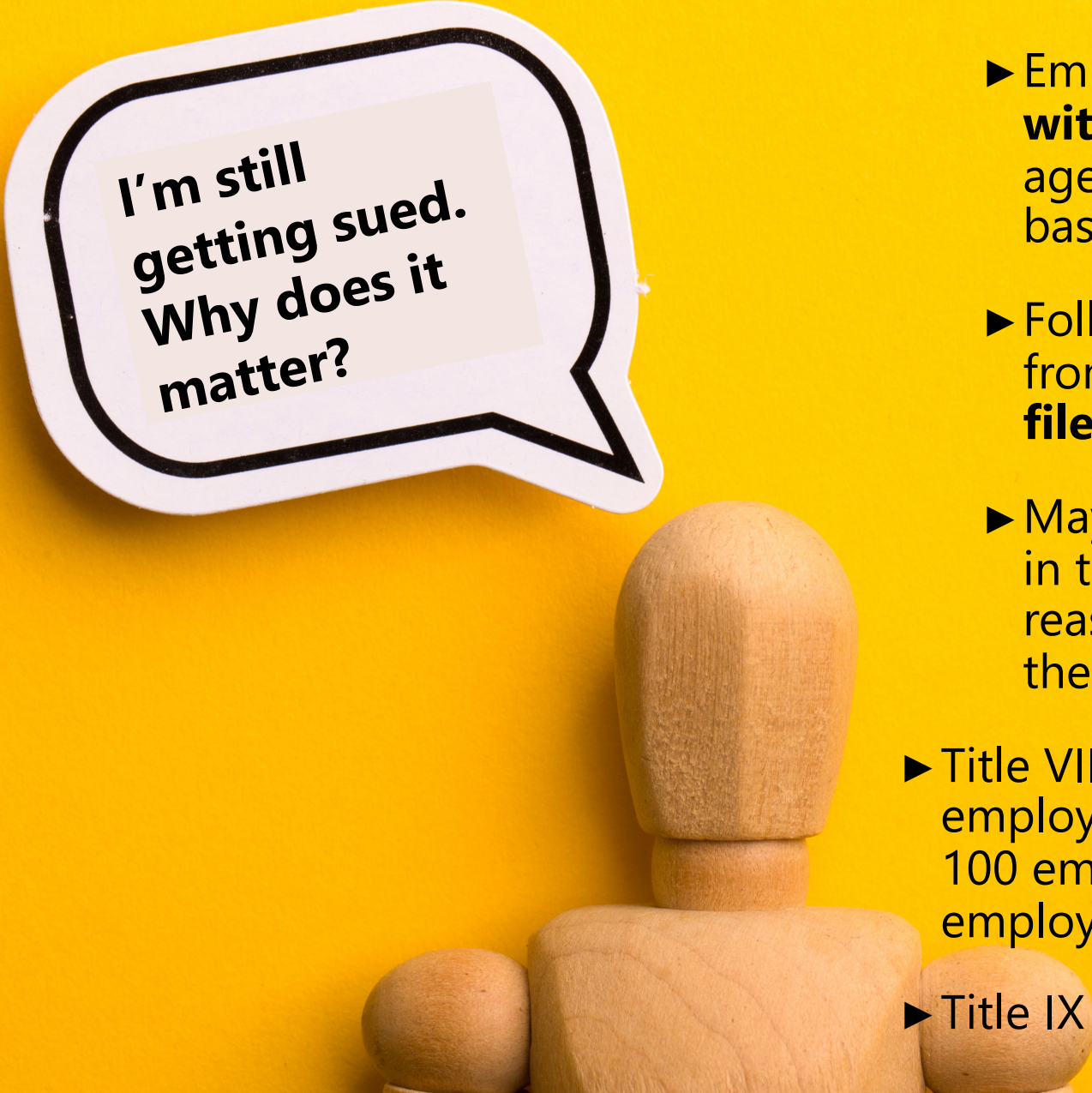


Plaintiff (and five circuit courts) say...

- ▶ Title IX protects “persons” from sex discrimination, not “students” or “beneficiaries.”
- ▶ Title IX is generally interpreted the same as Title VII.
- ▶ Given Title IX’s broad mandate to eliminate discrimination, Congress implicitly intended to give employees of educational institutions who claim sex discrimination the ability to sue.
- ▶ *Jackson* already answered this question by allowing a private right of action for employees for retaliation.

Defendant (and three circuits) say...

- ▶ Because Title IX was enacted under the Spending Clause, the ordinary remedy is loss of federal funding, rather than a private lawsuit.
- ▶ Because of its spending clause roots, Title IX's enforcement mechanisms are different from Title VII's.
- ▶ Students have a private right of action under Title IX, because they are the statute's intended beneficiaries and they would otherwise have no remedy.
- ▶ But employees already have a remedy for sex discrimination via Title VII.
- ▶ Jackson is distinguishable because Title VII does not give a remedy for retaliation for reporting discrimination against students, and not allowing a remedy for that would discourage reporting and harm students.



I'm still
getting sued.
Why does it
matter?

- ▶ Title VII requires that employees first exhaust their administrative remedies
 - ▶ Employees **180 days to file a charge with the EEOC** (300 if state or local agency enforces discrimination on same basis and file there first)
 - ▶ Following receipt of "right to sue" letter from EEOC, employees have **90 days to file suit**
 - ▶ May only bring claims that were included in the EEOC charge, or that are like or reasonably related to the allegations of the charge
- ▶ Title VII has caps on damages based on employer size, ranging from \$50,000 (15 to 100 employees) to \$300,000 (more than 500 employees)
- ▶ Title IX has neither of these things

OCR Sexual Abuse DCL

DCL on Sexual Abuse

- ▶ “This letter begins by documenting this alarming failure to protect children from adults in trusted positions of authority.”
- ▶ “[A]rticulat[es] and reiterat[es]” legal requirements under the Elementary and Secondary Education Act, Every Student Succeeds Act, and Title IX.
- ▶ OCR is opening 20 directed investigations into school districts whose 2023-24 Civil Rights Data Collection (CRDC) submissions contained responses that suggest that districts might not be addressing staff on student sexual misconduct appropriately.



DCL: ESEA Requirements

- ▶ ESEA conditions receipt of funds on policies that prohibit employees, contractors, and agents from helping an employee or contractor obtain a new position when there is knowledge or probable cause to believe the individual engaged in sexual misconduct involving a student.
- ▶ Letter urges schools to take ESEA responsibilities more seriously.
- ▶ ED will increase compliance monitoring.



DCL: Title IX Requirements

- ▶ ED “will vigorously enforce . . . Title IX.”
- ▶ Advises schools to ensure:
 - ▶ Policies and practices comply with ESEA and Title IX.
 - ▶ Officials who can take corrective action should be trained to recognize and respond to sexual misconduct.
 - ▶ Grievance procedures are not “merely nominal”; investigations must be “thorough, timely, and genuinely responsive to reported misconduct.”
 - ▶ Schools must comply with State mandatory reporting requirements.



DCL Take Aways

- ▶ DCL is an enforcement signal.
- ▶ Districts must take obligation to prevent and remedy sexual misconduct especially with respect to adult sexual misconduct.
- ▶ Ensure your policies, procedures, and training are up to date and followed.
- ▶ Emphasize prevention through training and appropriate hiring procedures.
- ▶ Evaluate your reporting procedures and ensure they are known, publicized, and easy to access.



**Disparate
Impact Rule
and Student
Discipline**

Disparate Impact Regulation

- ▶ Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance.
- ▶ Model regulations issued by HEW in 1964 included prohibitions on actions that have the “effect” of discriminating.
- ▶ In 2001, SCOTUS ruled in *Alexander v. Sandoval*, there is no private right of action for disparate impact discrimination under Title VI.



Disparate Impact



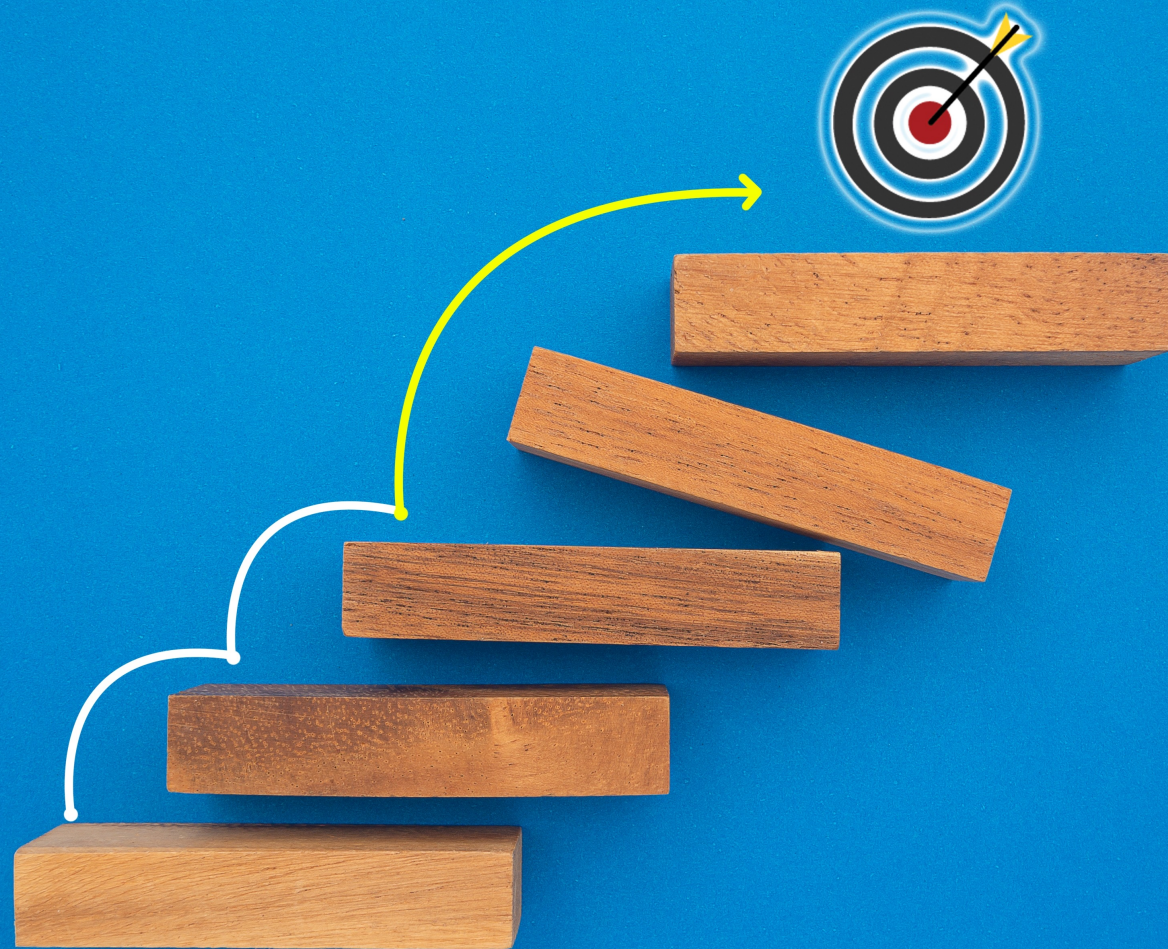
- ▶ Disparate impact provisions allowed demographic data to show that a school violated federal civil rights laws even if there was no facially discriminatory policy, practice, or discriminatory intent.
- ▶ Example: 2024 Resolution Agreement with school district in South Dakota regarding significant disparities in discipline referrals and sanctions as well as access to advanced learning programs for Native American and white students.
- ▶ ED closed the matter in March 2025.

~~Disparate Impact~~

- ▶ April 23, 2025 Executive Order 14281: Restoring Equality of Opportunity and Meritocracy
- ▶ U.S. Department of Justice updated its regulations under Title VI to eliminate disparate impact liability in December 2025
- ▶ July 23, 2026 – Department of Education removed disparate impact from Title VI Regulations



Final Rules



- ▶ DOJ and ED issued Final Rules to enact the changes – meaning no notice and comment period.
- ▶ Used the Administrative Procedure Act's exception for rules “relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.”

Student Discipline and Title VI



- ▶ April 23, 2025 Executive Order 14280 – Reinstating Common Sense School Discipline Policies - directed Ed to issue new guidance regarding student discipline and rejected disparate impact liability
- ▶ August 18, 2026 Guidance on Pupil Discipline and Compliance with Title VI
- ▶ States two “fundamental duties”:
 - ▶ Establish a disciplinary system that creates a safe and well-ordered learning environment; and
 - ▶ Ensure that students are not treated differently based on race, color, or national origin in matters of discipline or otherwise



Discipline and Title VI

- ▶ Schools should no longer be hamstrung by erroneous interpretations of Title VI and the Constitution. To protect students from unlawful discrimination and to ensure they have a safe and well-ordered learning environment, it is imperative to follow the original understanding of Title VI and the Constitution.
- ▶ Title VI and the Constitution prohibit intentional discrimination, not unintentional disparate impact.
- ▶ Neither Title VI nor the Constitution require the consideration or use of race in student discipline, and race-neutral student-discipline policies administered in an evenhanded way and adopted and applied without wrongful racial intent or different treatment based on race do not violate Title VI or the Constitution.



**OCR's Recent
Title VI
Resolution
Agreements**

What is Being Resolved?

- ▶ OCR's website lists 31 Title VI Resolution Agreements so far for 2026.
- ▶ What topics do those RAs address?
 - Race-Based Programs – 31
 - Racial Harassment - 0
 - National Origin Involving Religion – 0
 - Shared Ancestry – 0
 - English Language Learners – 0
 - Discipline - 0



The PhD Project

- ▶ All 31 of those Resolution Agreements addressed one program: The Ph.D. Project.
- ▶ OCR's Explanation:
 - In *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College (SFFA)*, 600 U.S. 181 (2023), the Supreme Court clarified that the use of racial preferences in college admissions is unlawful and set forth a framework for evaluating the use of race by state actors and entities covered by Title VI. Although *SFFA* addressed admissions processes and decisions, the principle that informs the Court's holding applies in other contexts, including using race and/or national origin in decisions regarding scholarships and other financial aid: If an educational institution treats a person of one race differently than it treats another person because of that person's race, the educational institution violates the law.



But what is OCR investigating?



Investigations

(Based on press releases)

- ▶ Aug. 18th - Two investigations opened into "school districts that allegedly require personnel to consider race when making disciplinary decisions." (Fayetteville, Arkansas and Milwaukee, Wisconsin)
- ▶ Aug. 6th – Two investigations into whether the schools "permit and perpetuate antisemitic harassment." (San Jose State Univ.* and San Francisco State Univ.)
- ▶ July 22nd – Investigations opened into five medical schools to determine whether the schools considered race in admissions. (Dartmouth, East Carolina Univ., St. Louis Univ., Western Univ of Health and Sciences, William Carey Univ. College of Osteopathic Med.)

But what is OCR investigating?



Investigations

- ▶ June 8th – Investigation into “racially-discriminatory programming” including clubs that exclude students based on race, consideration of race in class assignments and provision of academic support (Cherry Creek, CO). Also investigating a parent committee called “Voices of Color.”
- ▶ May 8th – Antisemitism investigation (Bay County, FL)
- ▶ April 29th – Race in admissions (Stanford Univ.)
- ▶ April 23rd – Antisemitism investigation (NYC Dept. of Ed)
- ▶ March 23rd – Race in admissions (Harvard Univ.)
- ▶ Feb. 17th – Racially discriminatory programming (Portland, Oregon)

What can we take away?

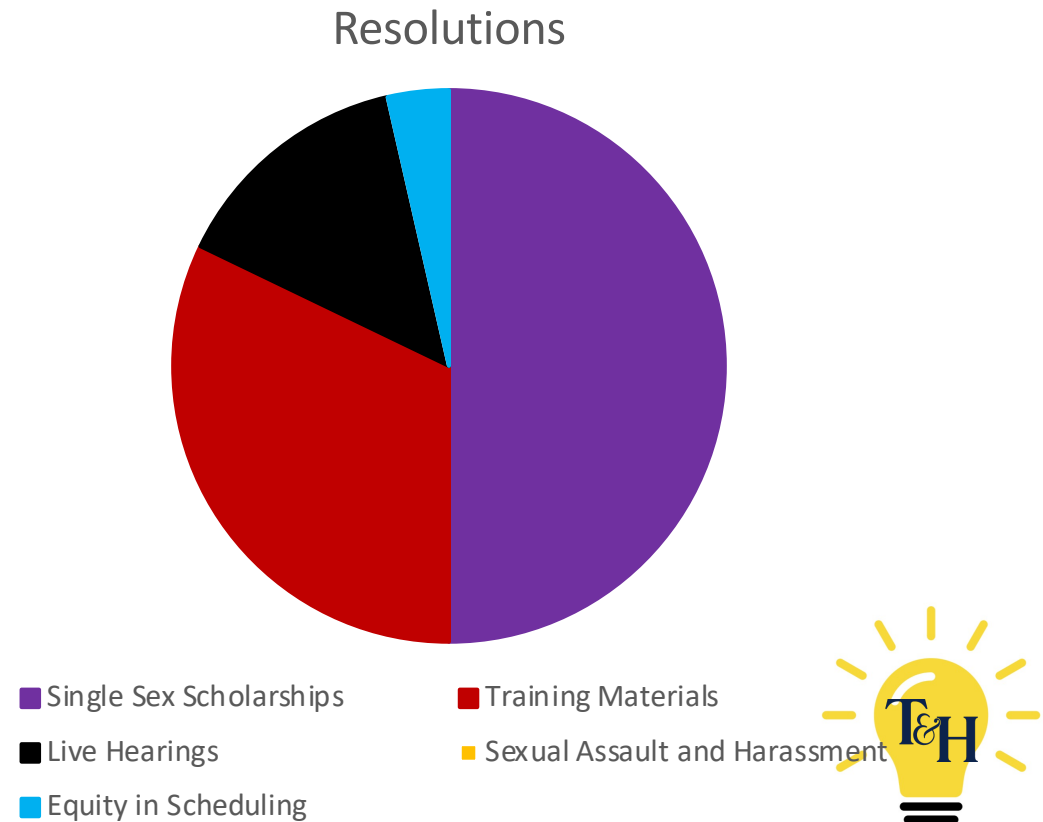
- ▶ Elimination of "DEI" initiatives and affirmative action remains an enforcement priority for OCR under the current administration.
- ▶ Antisemitism investigations are being opened, that has not resulted in any resolutions this year.*
- ▶ Investigation of student discipline issues under Title VI appears likely to continue, but will look different.
 - ▶ Recently announced investigations are looking at whether schools violate Title VI by considering race in making disciplinary decisions, not at whether discipline is disproportionately impacting students of color or students with disabilities.



**OCR's Recent
Title IX
Resolution
Agreements**

What is Being Resolved?

- ▶ OCR's website lists 24 Title IX Resolution Agreements so far for 2026.
- ▶ What topics do those RAs address?
 - Single Sex Scholarships – 14
 - Training Materials – 9
 - Failure to Guarantee Live Hearings – 4
 - Equity in Athletics Scheduling – 1
 - Sexual Assault and Harassment - 0



What About Sexual Harassment/Abuse?

- ▶ As mentioned before, OCR issued a Dear Colleague Letter condemning sexual abuse and announcing a K-12 prevention initiative.
- ▶ However, we still haven't seen OCR issue a single resolution on this topic since January 2025.
- ▶ Per the DCL, OCR is opening 20 directed investigations into school districts based on 2023-24 Civil Rights Data Collection (CRDC) submissions.
- ▶ Too soon to know whether this will also result in more resolutions of already pending sexual harassment and abuse cases.



What else is ED investigating?



- ▶ Press releases show:
 - ▶ Transgender student issues remain top of mind
 - ▶ “Parental rights” relating to students’ gender identities
 - ▶ Athletics remain a hot topic
 - ▶ Bathroom use (separate from athletics)
 - ▶ Lesson content and parental opt-outs

Other enforcement mechanisms



- ▶ We're also seeing more willingness to sue districts as a means of enforcement.
- ▶ The Justice Department's Civil Rights Division filed a lawsuit on Sept. 1 against Kansas City, Kansas Public Schools for "facilitating secret 'gender transitions' for children at school."

What can we learn and forecast?

- ▶ POST YOUR TITLE IX TRAINING MATERIALS!!
 - ▶ This is an easy way to avoid an investigation.
- ▶ The conversation around students' gender-identities and who can participate in athletics is not going anywhere.
- ▶ Hopefully, we will see more resolution of sexual harassment and sexual abuse complaints now that ED has announced its K-12 "crack down."



Bonus: CDRC Data Drop

- ▶ Last week, the Dept of Ed published its Civil Rights Data Collection info for 2023-24 on its website.
 - Would typically have been available at the end of last year. No reason given for delay.
 - No First Look Report this time; only the raw data are available.
 - New Information Gathered: teacher retention, evaluation of pre-school students for EL or disability status, whether students who need wi-fi devices for distance learning received them.
 - Redacted Data: treatment of transgender students.



Title IX Administrators

T&H Has You Covered

GET CONNECTED

K-12

4th Tuesday

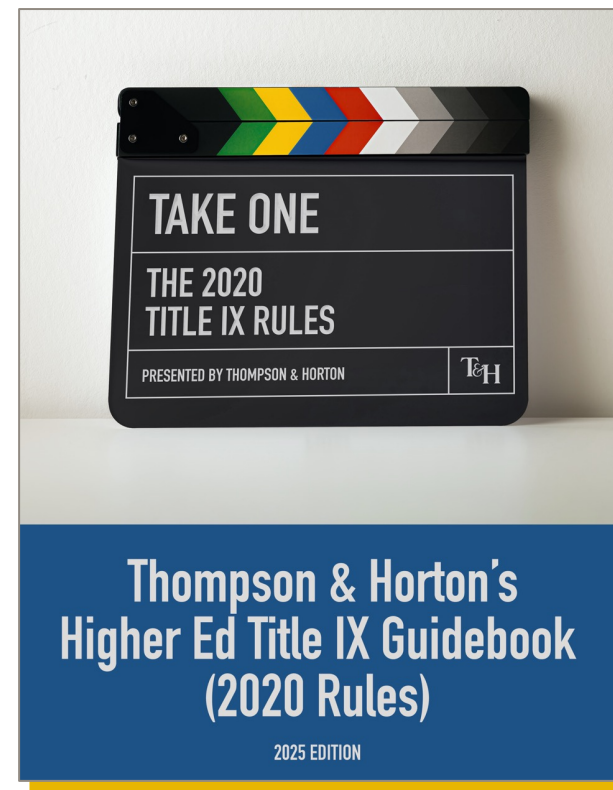
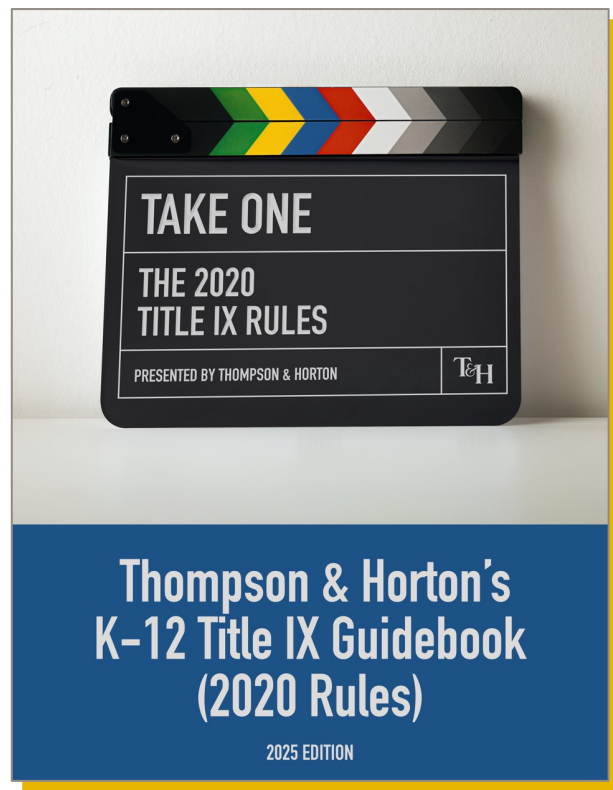


Higher Ed

4th Wednesday



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CLASS IS IN SESSION

TITLE IX GRIEVANCE
PROCESS FOR
TEAM MEMBERS

K-12



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Basic Training
September 15th
10:00-2:30

TITLE IX TWISTS AND TURNS



Advanced Training for Navigating Unexpected Challenges During the Title IX Grievance Process



HIGHER EDUCATION

September 22
10:00 a.m. Central



K-12

September 29
10:00 a.m. Central



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